

NEW COAL MINING POLICY – 2021

I – INTRODUCTION

In 2020, without any consultation with affected Alberta municipalities, First Nations or other stakeholders, the UCP government revoked the 1976 coal policy put in place by the Lougheed government that blocked surface coal mining in about 1.4 million hectares of wilderness areas, including the Rocky Mountains and the Eastern Slopes.

At the time, it was difficult to understand for many Albertans as to why such a change was contemplated, since many jurisdictions around the world were getting out of the business of coal mining (See the Economist, “Killing Coal-Time To Make Coal History”, December 3, 2020). It is assumed the decision was based on creating employment opportunities as compared to impacting the remarkable environment along the western borders of our province. It was understood the coal would be sold to industries throughout Asia.

Premier Kenney called the existing coal policy’s protections “obsolete”. He did not explain these concerns. The Minister of Energy recently stated “a modern coal policy will protect the areas Albertans cherish while allowing responsible resource development in the appropriate places”. She did not clarify what she considered to be “appropriate places”.

The Alberta Minister of the Environment recently stated that the water quantity and quality will not be threatened by coal mining due to the development of increased coal mining activism in southern Alberta. How did he reach these conclusions?

Due to a public outcry, the provincial government backtracked and reinstated the 1976 coal policy and declared that a public consultation process will take place in March to determine what the new coal policy should be. Such discussions would include what type of leases would not be sold on so-called “vulnerable lands”. What type of mining would be allowed in these sensitive ecological areas {ie open,

strip or surface operations}. What categories would be applied to these areas? What guidelines are being contemplated for the conduct of potential mining operations and how is the consultation process to be conducted?

II – REGIONAL PLANS

In the development of a new coal policy, it is suggested that the Alberta government must be cognizant of and have regard to both the South Saskatchewan Regional Plan (SSRP) 2014-2024 as amended in 2017 and the Livingston - Porcupine Land Management Plan (LFMP) 2018 , in addition to treaty concerns raised by Treaty 7 First Nations residing in southern Alberta.

In reviewing specifically the LFMP document, under the heading of Executive Summary Plan Authority, it refers to the LFMP as a sub-regional plan under the SSRP in accordance with s. 13 (5) of the Alberta Land Stewardship Act as implemented as part of the SSRP. Under this provision it also refers to the “responsible development of natural resources also to the plan having long term cumulative effects of footprints on public lands – particularly impacts on biodiversity and watersheds in the Public Lands Zones. The term “cumulative effects” is described in Appendix A of the document as “the combined effects of past, present and reasonable foreseeable land use activities over time on the environment”.

Under section 1.1 of the LFMP, under the heading “ Purpose”, it notes:

“The Plan outlines a system to minimize the extent, duration and rate of ‘cumulative’ footprint to achieve landscapes and healthy, functioning ecosystems that provide a range of benefits to communities and all Albertans”.

Under section 1.3 of the document under the heading of “Provincial Guidance”, it states:

“ According to the SSRP, the management intent for public land in the Eastern Slopes is for the integrated management that incorporates the objectives for biodiversity and healthy,

functioning ecosystems, to achieve multiple objectives”. The term “biodiversity” is again described in Appendix A as “ the assortment of life on earth- the variety of genetic material in all living things , the variety of species on earth and the different kinds of living communities and the environments in which they occur”.

Under section 1.3 of the LFMP, it is important to note that it states “Watershed management and headwaters protection is the highest priority”, according to the SSRP, in which the management intent for public land in the Eastern Slopes is for the integrated management that incorporates the objectives for biodiversity, and healthy, functioning ecosystems, to achieve multiple objectives”. The term “Headwaters” is defined in App A as “the source and upper tributaries of a stream or river”.

In section 4 of the document under the heading “Implementation”, it is clear that these two regional plans apply to all government departments and agencies. In the LFMP it reads “All departments and agencies and resource managers with land-use tenure and resource management mandates in the Livingston - Porcupine Hills area will be responsible for leadership and collaboration to enable the purposes and outcomes outlined in the Plan”.

Based on these provisions of these two plans, it is suggested that in the development of a new coal policy, Alberta government departments and the AER must comply with the provisions described in both the SSRP and the LFMP.

III – FIRST NATION TREATY RIGHTS

It seems clear that a new coal policy in Southern Alberta will affect Treaty 7 First Nations living in these areas. In the LFMP under the heading “Common Terminology”, it refers to “all First Nations in the planning area adhered to a Treaty, under which they hold treaty rights within the meaning of Section 35 of the Constitution Act, 1982”.

In addition under section 1.1 under the heading “Purpose” of the LFMP, it notes:

“This plan is also intended to implement the principles of the UN Declaration on the Rights of Indigenous Peoples in a way that is consistent with Canada’s Constitution and with Alberta law”.

Section 4.1.1 mentions the inclusion of Indigenous Peoples in land-use planning. In addition, under App A of the LFMP, it also states that Alberta recognizes that “First Nations engage in customs or practices on the land that are not listed in s.35 Treaty Rights”.

In the enabling legislation creating the Alberta Energy Regulator (AER), this agency is barred by law from considering any constitutional questions that may arise from treaty rights concerning the coal mining review.

IV – CONCLUSION

It is clear from the outset that the Alberta government did a poor job without consulting anybody by revoking the 1976 coal policy and then after concerns raised by the public, reinstated the original policy.

To develop an effective and legal new coal policy, it is suggested the government must consider the following factors:

1. It is argued that Albertans were never consulted prior to the revocation of the 1976 coal policy;
2. In the development of a new coal policy the Alberta government must recognize and comply with the provisions described in the SSRP and the LFMP;
3. In the development of a new coal policy the Alberta government must recognize the treaty rights of the First Nations residing in southern Alberta and the Livingston -Porcupine Hills area;
4. In the development of a new coal policy, what federal legislation would be impacted? (ie fish habitat, migratory birds, water resources, and cross border impacts);

As it now stands, the Federal government is only involved in a review if a certain production of coal is exceeded. (B. Weber, Canadian Press, “Ottawa needs to consider potential overall

effects of expanded coal-mining in Alberta – petition says”, March 22, 2021).

Ottawa is already involved in joint environmental assessments of five existing coal projects and several First Nations argue they should be involved in the sixth – Montem Resources Tent Mountain project. The First Nations take the position that all proposed coal-mining projects in Alberta should be environmentally assessed by the Federal government.

5. Intervenor will want to know what mining leases have already been approved by the Alberta government and therefore would not be subject to the new coal policy. Before the 1976 coal policy was reinstated, intervenors are requesting that the Alberta government should cancel all exploration coal leases granted by the government in the interim period between the time the Alberta government revoked and reinstated the 1976 coal policy. Where are these approved leases located? What type of mining has been approved by the Alberta government for these approved leases?
6. It is recommended that the Alberta government initiate immediately a moratorium on all coal mining operations in the province until the government receives recommendations from the Review Committee Panel.

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